

REMARKS

The present application includes claims 1-89 and 100-173. Claims 1-72 and 100-171 were allowed. Claim 73 was amended.

The response refers primarily to the independent claims. The patentability of the dependent claims follow at least for the reason of being dependent on an independent claim that is patentable.

Claims 73-82 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Foster (6,500,182). Applicants respectfully disagree. However, in order to further the application to allowance, applicants are amending the claim to state explicitly that in each repetition a different portion of the implant is prevented from deforming by the restraining element. This limitation was inherent in the claim and is made explicit in an attempt to further the application toward allowance.

Claim 73 requires providing a medical implant. Foster relates to a medical retrieval device (10), which is not intended to be implanted.

Claim 73 requires repeating the applying, controlling and moving, a plurality of times. The Examiner stated that it is mere duplication of the essential working parts that involves only routine skill in the art. Applicants respectfully disagree.

The repeating in claim 73 defines a controlled process in which the deformation is controlled by moving the restraining element to different positions. In each new position, a different extent of the implant is deformed, as explained, for example, on page 2, lines 11-23 and page 3, lines 13-20, of the present application. In Foster, on the other hand, the constraining device 14 is merely used to cover or not cover the resilient members 13 of the medical retrieval device 10. Hence, the repetition of the acts in Foster is useless and if it were suggested it would be mere duplication, as stated by the Examiner. The amendment to claim 73 emphasizes this distinction.

The dependent claims are patentable at least because they depend on allowable subject matter. Nonetheless, at least some of the dependent claims clearly add patentability over Foster. Claim 75 for example requires that the restraining element is inside the implant. In Foster the restraining element is a covering sheath outside of the retrieval device.

Claim 78 requires that the motion of the restraining element is controlled by an external mechanism that receives a continuous motion input from an operator. In Foster, there is no external mechanism that controls the motion of the restraining element.

Claims 83-89 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Foster (6,500,182). Applicants respectfully traverse the rejection and state that the Examiner has not established a *prima facie* case of obviousness as Foster does not mention the following limitations of the claim.

Claim 83 requires providing an axial implant having a plurality of spikes extending radially thereto, arranged along the implant's axis.

In Foster, a medical retrieval device is described, not an implant. In addition, the grasping members 13 of the retrieval device could hardly be considered spikes. Even if the grasping members 13 are considered spikes, they are not arranged along the implant's axis.

Claim 83 further requires retracting a collar to allow at least one spike to extend and to repeat the retracting until substantially all of the spikes are extended.

In Foster, the constraining device 14 is used in either a closed or open position. Applicants cannot envision any state of constraining device 14, in which some of grasping members 13 are allowed to extend but others are not allowed to extend. Furthermore, there is no suggestion or need in Foster to repeat the retraction until substantially all the spikes are extended.

The dependent claims are patentable at least because they depend on allowable subject matter.

Claims 172-173 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Foster (6,500,182). Applicants respectfully traverse the rejection and state that the Examiner has not established a *prima facie* case of obviousness as Foster does not mention the following limitations of the claim.

Claim 172 requires providing an axial tube with slots configured to expand as a plurality of spikes extending radially thereto. The spikes being arranged along the tube axis. It is noted that from the acts of retracting and repeating it is required that each time the collar is retracted one or more slots are allowed to extend radially.

As discussed with relation to claim 83, Foster does not teach or suggest a plurality of spikes arranged along the tube axis such that a plurality of retractions can each involve extension of one or more spikes.

Applicants submit that the present application is ready for allowance. If the Examiner does not agree, the Examiner is respectfully requested to call the undersigned at toll free 1 (877) 428-5468. This number connects directly to the undersigned's office in Israel. Note that Israel is 7 hours ahead of Washington, and that the normal work week is Sunday through Thursday. The undersigned can usually be reached until 11:30 AM Washington time at the above number.

Respectfully submitted,  
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